Filed 2/4/19 QBE Insurance Corp. v. American Claims Management, Inc. CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

QBE INSURANCE CORPORATION, Plaintiff and Respondent, v. AMERICAN CLAIMS MANAGEMENT, INC., Defendant and Appellant.	D073345 (Super. Ct. No. 37-2017-00031574-CU-PA-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Lisa C. Schall, Judge. Affirmed.

Freeborn & Peters and Michael J. Kelly, Bruce M. Engel, Katheleen A. Ehrhart; Davis Wright Tremaine and Rochelle L. Wilcox, James G. Parker for Defendant and Appellant.

Sheppard, Mullin, Richter & Hampton, Peter H. Klee and Marc J. Feldman for Petitioner and Respondent.

Appellant American Claims Management, Inc. (ACM), a third party claims service administrator, entered into a contract to handle insurance claims on behalf of respondent QBE Insurance Corporation (QBE). ACM appeals a judgment entered after the superior court confirmed an arbitration award in QBE's favor. The arbitration panel (the Panel)[1] concluded that ACM violated the parties' contract in handling a claim by a QBE auto insurance policy holder, Galdino Cortes, who was involved in a vehicular accident that injured three members of the Cardona family. The Panel awarded QBE total damages of $18,450,855.73, which included interest, attorney fees and costs.

ACM contends the Panel exceeded its powers because it (1) "ignored California law" as shown by its failing to cite "a single California case or statute in discussing whether ACM breached the contract or must indemnify QBE"; (2) "created new California law in violation of California statutes and public policy;" (3) held ACM liable for the entire $15 million settlement although, at most, ACM is assertedly only liable to indemnify QBE for the $1,250,000 that QBE paid to Cortes under the settlement agreement, and not the $13,750,00 settlement with the Cardonas;[2] (4) manifestly disregarded the law under the Federal Arbitration Act (FAA); and (5) "miscalculated

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1 The Panel members were the Hon. Rex Heeseman (Ret.), Deborah Rothman, and Michael Weaver.

2 ACM elaborates: "Cortes was QBE's insured, thus QBE owed him a duty of good faith and fair dealing. [Citation.] . . . Cortes had standing to assert a bad faith claim against QBE, which Cortes did by filing a cross-complaint against QBE in a subsequent lawsuit. . . . QBE and Cortes settled . . . for $1,250,000."

amounts owed to QBE." ACM specifically contends the Panel improperly included in its award "damages relating to attorneys' fees in the Cardona[ ] litigation"; "fees and interest, for obligations incurred before the Panel determined the duty to indemnify arose"; and attorney fees in the arbitration. (Some capitalization omitted.) We conclude the trial court did not err in confirming the award because ACM claims only legal errors by the Panel and not acts in excess of the Panel's power that must be vacated or corrected. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The parties stipulated to the following facts during arbitration: In February 2011, Cortes was involved in a traffic collision with the Cardonas. Cortes's insurance policy had a $30,000 liability limit per accident. That month, the Cardonas mailed a policy limits demand to ACM, giving it 15 days to respond. When ACM sought to accept the offer after the deadline had elapsed, the Cardonas rejected it. In November 2012, the Cardonas sued Cortes. With QBE's approval, ACM hired attorneys to defend Cortes. In June 2015, following a trial, the Cardonas obtained a judgment against Cortes in the amount of $20,974,903.

ACM did not timely communicate to QBE its receipt of the demand letter. The Panel wrote in its final award: "In what would become a disturbing pattern, ACM also neglected to inform QBE that [] Cardona had called ACM . . . to follow up on his demand letter, that the demand letter expired . . . , and that [an ACM employee who was subsequently fired] failed to contact Cardona until [after the demand letter's deadline]. In other words, ACM apparently chose to withhold from QBE evidence of its own negligent

performance under the Agreement that . . . had potentially exposed ACM to hundreds of thousands, if not millions of dollars for bad faith."

In June 2016, ACM and QBE further stipulated that $15 million was a reasonable amount to settle the Cardona lawsuit against QBE, and it was a good faith settlement. They agreed that no party can challenge the amount of the settlement, and no party "will assert that the other party acted as a volunteer by entering into the settlement." QBE subsequently paid the Cardonas that amount.

QBE sued ACM to recover the $15 million settlement plus more than $1 million in legal fees that QBE incurred in the related action.

Arbitration Ruling

The Panel ruled on QBE's breach of contract claim that QBE had proven its prima facie case and "ACM was deficient in its performance of its responsibilities to QBE under the [Claims Management Agreement (CMA)]." The Panel rejected ACM's claim that QBE should have settled the Cardona claims earlier and for less money: "ACM threatened that, if QBE paid more than the policy limits to settle the claims, ACM would withhold indemnity based on the theory that QBE acted as a 'volunteer,' which is exactly what ACM ended up doing anyway, notwithstanding the stipulation it entered into essentially authorizing QBE to enter into the $15 million settlement. Conversely, ACM had assured QBE that if it didn't settle in excess of policy limits, ACM would indemnify QBE for any extra-contractual liability." The Panel ruled: "[O]nce the settlement amount was paid, and here it was agreed that the amount was reasonable under the

circumstances, the duty to indemnify ripened, and ACM became liable for QBE's attorney's fees incurred in the within proceeding."

The Panel ruled: "The starting point for the Panel's analysis of contract damages is with ACM's failure to timely review the letter demand, timely respond thereto and ultimately pay policy limits on behalf of Cortes. Had it done so, QBE would have only incurred an expenditure of $30,000[ ], [Cortes's] full policy limits. . . . [¶] QBE ultimately paid $15 [million] to resolve the Cortes and Cardonas claims. All but $30,000[ ] of this payment was required because of ACM's breach."

Trial Court Proceedings

QBE petitioned the superior court to confirm the arbitrator's award. ACM opposed and instead petitioned the court to vacate or correct the award, and attached several exhibits that it sought to introduce into evidence, including court filings, excerpts from transcripts of the arbitration proceedings, correspondence regarding analysis of the claim, and the parties' arbitration briefs. QBE in reply objected to ACM's evidence on grounds the documents lacked foundation, were not properly authenticated by ACM's attorney and, other than the arbitration award, were not relevant.

The court sustained QBE's objections to ACM's evidence: "All the evidence submitted by ACM has not been properly authenticated and is therefore not admissible. Had it been admitted it would not have altered this court's ruling on the merits of the Petition and Cross-Petition." The court granted the petition to confirm the award and denied the motion to vacate or correct the award, ruling: "It appears to the Court that [ACM in] numerous and lengthy pleadings is attempting to re-litigate the arbitration

because it does not agree with the Panel's findings or award. . . . ACM is not really arguing that the Panel's award strayed beyond the scope of the CMA. Instead, ACM is contesting the Panel's decision and findings because it does not agree with the award. All of ACM's arguments are unavailing. ACM is trying to re-litigate the merits of the award regarding whether QBE is entitled to indemnity. That is an issue squarely within the CMA for the Panel to decide." Judgment was entered in QBE's favor.

DISCUSSION

Considering the strong public policies favoring arbitration as a speedy and relatively inexpensive means of dispute resolution, the scope of judicial review of private, binding arbitration awards is extremely narrow. (*Moshonov v. Walsh* (2000) 22 Cal.4th 771, 775 (*Moshonov*); *Advanced Micro Devices, Inc. v. Intel Corporation* (1994) 9 Cal.4th 362, 372-373 (*Intel*); *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 11.) We can neither review the merits of the controversy, the arbitrator's reasoning, or the sufficiency of the evidence supporting the award, nor correct or vacate an award because of an arbitrator's legal or factual error, even if it appears on the award's face. (*Moshonov,* at p. 775; *Moncharsh,* at pp. 11; *id*. at p. 33 [even "an error of law apparent on the face of the award that causes substantial injustice does not provide grounds for judicial review"].) With respect to contractual remedies, "arbitrators, unless expressly restricted by the agreement or the submission to arbitration, have substantial discretion to determine the scope of their contractual authority to fashion remedies, and . . . judicial review of their awards must be correspondingly narrow and deferential." (*Intel,* at p. 376.) These judicial review rules confirm the parties' intentions that the award be final.

(*Moncharsh, supra,* at p. 9; *California Faculty Assn. v. Superior Court* (1998) 63 Cal.App.4th 935, 944.)

Sections 1284[3] and 1286.6 state the only grounds for correcting an arbitration award. (*Moshonov, supra,* 22 Cal.4th at p. 775; *Moncharsh, supra,* 3 Cal.4th at p. 13.) Section 1286.6, applied to the arbitrator by reference in section 1284, limits an arbitrator's ability to correct an award after it has been issued to an "evident miscalculation of figures" or evident mistake in the description of any person, thing or property (§ 1286.6, subd. (a)) or to "matter[s] of form, not affecting the merits of the controversy" (§ 1286.6, subd. (c)). (*Landis v. Pinkertons, Inc.* (2004) 122 Cal.App.4th 985, 992; *Century City Medical Plaza v. Sperling, Isaacs & Eisenberg* (2001) 86 Cal.App.4th 865, 877.) Section 1286.6 permits the court to correct an arbitration award when "the arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted." (§ 1286.6, subd. (b).)

Guided by these standards, we narrowly and deferentially review the arbitrator's award. (*Intel, supra,* 9 Cal.4th at p. 376.) We review de novo the propriety of the superior court's order denying correction of and confirming the final award. (*Id*. at p. 376, fn. 9.)

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3 Section 1284 provides that an arbitrator "upon written application of a party to the arbitration, may correct the award upon any of the grounds set forth in subdivisions (a) and (c) of Section 1286.6 not later than 30 days after service of a signed copy of the award on the applicant."

We reject ACM's contention the Panel's final award is in excess of its powers under section 1286.6, subdivision (b). "Generally, a decision exceeds the arbitrator's powers only if it is so utterly irrational that it amounts to an arbitrary remaking of the contract between the parties." (*Intel, supra,* 9 Cal.4th at p. 377.) In *Moshonov*, the parties prayed for attorney fees in various court pleadings, and subsequently submitted the "matter" to binding arbitration without limitation as to the issues to be arbitrated. (*Moshonov, supra*, 22 Cal.4th at p. 775.) Under these circumstances, the *Moshonov* court concluded, "The recovery or nonrecovery of fees being one of the 'contested issues of law and fact submitted to the arbitrator for decision' [citation], the arbitrator's decision was final and could not be judicially reviewed for error." (*Id.* at p. 776.)

On their face, ACM's several claims amount to nothing more than assertions of legal error. The trial court was correct in noting that even if the documents were admitted, that would make no difference because ACM is asserting only legal error.

"When parties contract to resolve their disputes by private arbitration, their agreement ordinarily contemplates that the arbitrator will have the power to decide any question of contract interpretation, historical fact or general law necessary, in the arbitrator's understanding of the case, to reach a decision. [Citations.] Inherent in that power is the possibility the arbitrator may err in deciding some aspect of the case. Arbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law or fact, and arbitral awards may not ordinarily be vacated because of such error, for ' "[t]he arbitrator's resolution of these issues is what the parties bargained for in the arbitration agreement." ' " (*Gueyffier*

v. Ann Summers, Ltd. (2008) 43 Cal.4th 1179, 1184, citing *Moshonov, supra,* 22 Cal.4th 771, 775-777; *Intel, supra*, 9 Cal.4th at pp. 372-375; *Moncharsh, supra,* 3 Cal.4th at p. 28; accord, *Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 916-917.)

DISPOSITION

The judgment is affirmed. QBE Insurance Company is awarded its costs on appeal.

O'ROURKE, J.

WE CONCUR:

HUFFMAN, Acting P. J.

AARON, J.